

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

STATE OF IOWA ex rel.

THOMAS J. MILLER,

ATTORNEY GENERAL OF IOWA,

99AG25112,

Plaintiff,

v.

MERCK & CO., INC.

Defendant

EQUITY NO. C12 59178

PETITION

FILED
POLK COUNTY
09 MAY 20 PM 8:46
CLERK DISTRICT COURT

INTRODUCTION

COMES NOW the state of Iowa ex rel. Attorney General Thomas J. Miller, by Special Assistant Attorney General William L. Brauch, pursuant to the provisions of Iowa Code § 714.16 (2007), commonly referred to as the Iowa Consumer Fraud Act, and files this claim against defendant Merck & Company, Inc., ("Merck") and states as follows:

JURISDICTION AND VENUE

1. This action is brought by the State of Iowa ex rel. Attorney General Thomas J. Miller, which has jurisdiction to bring this action pursuant to Iowa Code section 714.16.

2. Defendant at all times mentioned herein advertised and transacted business in Polk County and elsewhere within the State of Iowa. The State of Iowa invokes the jurisdiction of this Court pursuant to the provisions of Iowa Code section 714.16. The violations of law described herein have occurred in Polk County and elsewhere in the State of Iowa. Venue is proper in Polk County pursuant to the provisions of Iowa Code section 714.16(10).

PARTIES

3. Plaintiff, the State of Iowa ex rel. Attorney General Thomas J. Miller, is charged with the enforcement of the Iowa Consumer Fraud Act, Iowa Code section 714.16.

4. Defendant Merck is incorporated under the laws and statutes of the State of New Jersey; its principal place of business is One Merck Drive, Whitehouse Station, New Jersey. At all times material to this complaint, Defendant transacted business in the State of Iowa by advertising, soliciting, selling, promoting and distributing prescription drugs, including Vioxx®, to consumers in the State of Iowa.

BACKGROUND

5. Vioxx is a type of non-steroidal anti-inflammatory drug (“NSAID”) commonly known as a “selective COX-2 inhibitor” or “COX-2.” NSAIDs are widely prescribed to treat the symptoms of arthritis as well as chronic and acute pain from other causes. NSAIDs are highly effective against pain and inflammation; however, they can cause gastro intestinal (GI) side effects, including serious adverse events such as obstructions, bleeds, and perforations.

6. NSAIDs work against pain and inflammation by inhibiting enzymes known as cyclo-oxygenase or COX. There are two forms of COX enzymes: COX – 1 and COX-2. COX-1 is involved in the maintenance and repair of the GI system as well as the production of thromboxane, a substance that promotes blood clots. In addition to its role in pain and inflammation, COX-2 is involved in the production of prostacyclin, a substance that helps prevent blood clots. For cardiovascular health, prostacyclin and thromboxane must be in balance.

7. Selective COX-2 inhibitors are NSAIDS that block COX-2 without affecting COX-1. This class of drugs was developed in the 1990s in hope of treating pain and inflammation without blocking COX-1's beneficial effect on the GI system. Unfortunately, it turned out that COX-2 drugs create an imbalance between thromboxane and prostacyclin that result in an increased risk of heart attack and other adverse cardiovascular events. Any advantage COX-2's have regarding GI safety is offset by increased cardiovascular risk.

DEFENDANT'S COURSE OF CONDUCT

8. Merck began marketing Vioxx in May of 1999 with an aggressive and deceptive promotional campaign directed at both consumers and at health care professionals.

9. When promoting Vioxx directly to consumers and to health care professionals, Merck misrepresented the cardiovascular safety of Vioxx.

10. On September 30, 2004, Merck finally admitted that Vioxx caused serious cardiovascular adverse events and withdrew the drug from the market.

11. For the entire period of time Vioxx was on the market, Merck's advertisements and promotional activities misrepresented Vioxx's cardiovascular safety.

12. This petition for injunctive relief has not been presented to, or denied by, any other judge of the district court.

13. Pursuant to Iowa R.Civ.P. 1.207, no security is required of the State.

CAUSE OF ACTION

14. The allegations contained in paragraphs 1 - 13 are incorporated herein by reference.

15. Defendant Merck violated Iowa Code section 714.16 by misrepresenting that

Vioxx had characteristics, uses, benefits, and qualities that it does not have.

REQUEST FOR RELIEF

Plaintiff respectfully requests that the Court order relief against defendant as follows:

A. Pursuant to Iowa Code section 714.16(7), that defendant, its successors, agents, representatives, employees, and all persons who act in concert with them be permanently enjoined from engaging in the acts and omissions alleged herein to violate Iowa Code section 714.16.

B. That the Court, pursuant to Iowa Code section 714.16(7), order defendant to restore any money to consumers whom the Court deems to be entitled to reimbursement as a result of defendant's unlawful acts or practices.

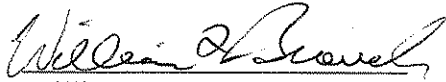
C. That the Court, pursuant to Iowa Code section 714.16(7), impose civil penalties upon defendant in an amount to be determined by the Court, but not to exceed forty thousand dollars per violation.

D. That the Court, pursuant to Iowa Code section 714.16(11), order defendant to pay plaintiff's costs, including but not limited to reasonable attorney fees and investigative costs incurred in this action.

E. That the Court order defendant to pay all court costs.

F. That the Court retain jurisdiction to enforce this order, including any injunction ordered by the Court.

Respectfully submitted,
THOMAS J. MILLER
Attorney General of Iowa



William L. Brauch AT0001121
Special Assistant Attorney General
Director-Consumer Protection Div.
Hoover Office Bldg.
1305 E. Walnut Street
Des Moines, IA 50319
Telephone: 515-281-8772
Telefax: 515-281-6771
E-mail: bbrauch@ag.state.ia.us
ATTORNEY FOR PLAINTIFF